

JS 44 (Rev. 06/17)

CDJ

## CIVIL COVER SHEET

17-cv-5695

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

DARYL KOFSKY

(b) County of Residence of First Listed Plaintiff Philadelphia  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025; (215) 884-2491

## DEFENDANTS

MICHAEL SALERNO and BLACK DIAMOND INVESTMENT GROUP LLC

County of Residence of First Listed Defendant Delaware  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
		<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Fair Labor Standards Act, 29 U.S.C. 201, et seq.

Brief description of cause:

Failure to pay overtime premium compensation and contractually owed wages.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
12/16/2017

SIGNATURE OF ATTORNEY OF RECORD

Daryl Winebrake

DEC 19 2017

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

S.T.

CDJ

UNITED STATES DISTRICT COURT

17

5695

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 530 South 2nd Street, Philadelphia, PA 19147

Address of Defendant: 90 Atwater Road, Chadds Ford, PA 19317

Place of Accident, Incident or Transaction: Philadelphia, PA  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐No ☐

UNKNOWN

Does this case involve multidistrict litigation possibilities?

Yes ☐No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases  
(Please specify) Fair Labor Standards Act

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) \_\_\_\_\_

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, \_\_\_\_\_, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: \_\_\_\_\_

Attorney-at-Law

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 12/16/17

Peter Winbrake

Attorney-at-Law

PETER WINBRAKE

80496

Attorney I.D.#

DEC 19 2017

CDJ

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

DARYL KOFISKY

CIVIL ACTION

v.

MICHAEL SALERNO, et al.

NO. 17 5695

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

12/16/17	<u>Peter Winebrake</u>	<u>Plaintiff</u>
Date	Attorney-at-law	Attorney for
215-884-2491	215-884-2492	<u>p.winebrake@winebrakelaw.com</u>
Telephone	FAX Number	E-Mail Address

DEC 19 2017

## WINEBRAKE & SANTILLO, LLC

12/16, 2017

Via: Regular Mail

**17 5695**

Clerk of Court  
United States District Court  
Eastern District of Pennsylvania  
601 Market Street, Room 2609  
Philadelphia, PA 19106-1797

Re: Civil Complaint: DARYL KOFSEY v. MICHAEL SALETNO

To Whom It May Concern:

I enclose for filing: (1) a complaint in the above-referenced matter; (2) a completed Civil Cover Sheet; (3) a completed Case Management Designation Form; (4) a completed Designation Form; (5) a check covering the Court's filing fee; and (5) a disk containing a PDF image of the complaint.

Thank you for your attention to this matter. Please contact my office if the Court has any questions or concerns.

Respectfully,



WINEBRAKE & SANTILLO, LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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DARYL KOFSKY,

Plaintiff,

v.

MICHAEL SALERNO and BLACK  
DIAMOND INVESTMENT GROUP LLC,  
Defendants.

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:  
: CIVIL ACTION  
:  
: NO. \_\_\_\_\_  
:  
: ARBITRATION-ELIGIBLE  
:  
:  
:

**COMPLAINT**

Plaintiff Daryl Kofsky (“Plaintiff”) brings this lawsuit against Michael Salerno (“Salerno”) and Black Diamond Investment Group LLC (“Black Diamond”) (collectively “Defendants”), seeking all available relief under the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, *et seq.*, the Pennsylvania Wage Payment and Collection Law (“PWPCCL”), 43 P.S. §§ 260.1, *et seq.*, and, alternatively, the Pennsylvania doctrine of unjust enrichment.

**JURISDICTION AND VENUE**

1. Jurisdiction over the FLSA claim is proper under 28 U.S.C. § 1331.
2. Jurisdiction over the state law claims is proper under 28 U.S.C. § 1367.
3. Venue is proper under 28 U.S.C. § 1391.

**PARTIES**

4. Plaintiff resides in Philadelphia, PA.
5. Black Diamond is a corporate entity headquartered in Philadelphia, PA.
6. Salerno resides in Chadds Ford, PA.
7. Defendants are employers covered by the FLSA, the PMWA, and the PWPCCL.



**FACTS**

8. Defendants have owned and operated foreign currency trading companies operating under business names such as Black Diamond Forex, BDF Trading, and Advanta FX.

9. In February 2017, Defendants hired Plaintiff into the position of Senior Recruiter and agreed to pay him \$11.00/hour plus a \$125.00 bonus for each employee he successfully recruited. See Exhibit A.

10. In May 2017, Defendants agreed to increase Plaintiff's compensation to a \$55,000.00 annual salary plus a \$125.00 bonus for each employee he successfully recruited. See, e.g., Exhibit B.

11. Plaintiff stopped working for Defendants in approximately October 2017.

12. Throughout his employment, Plaintiff regularly worked 50 hours or more per week.

13. Defendants failed to pay Plaintiff any overtime premium compensation for hours worked over 40 per week, and, as asserted in Count I, such failure constitutes a willful violation of the FLSA.

14. Defendants often failed to pay Plaintiff the promised weekly salary of \$1,057.69 (\$55,000.00 divided by 52 weeks). Plaintiff currently estimates that Defendants owe him over \$10,000.00 in unpaid salary.

15. Defendants frequently failed to pay Plaintiff the promised \$125.00 bonuses. Plaintiff currently estimates that Defendants owe him over \$15,000.00 in unpaid bonuses.

**COUNT I**  
**(Alleging Violations of the FLSA)**

16. All previous paragraphs are incorporated as though fully set forth herein.

17. The FLSA entitles Plaintiff to overtime pay of "not less than one and one-half

times” his regular pay rate for every hour worked over 40 per week. 29 U.S.C. § 207(a)(1).

18. Defendants violated the FLSA by failing to pay any overtime premium.

19. In violating the FLSA, Defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions.

**COUNT II**  
**(Alleging Violations of the PMWA)**

20. All previous paragraphs are incorporated as though fully set forth herein.

21. The PMWA entitles Plaintiff to overtime pay of “not less than one and one-half times” his regular pay rate for every hour worked over 40 per week. See 43 P.S. § 333.104(c).

22. Defendants violated the PMWA by failing to pay any overtime premium.

**COUNT III**  
**(Alleging Violations of the PWPCCL)**

23. All previous paragraphs are incorporated as though fully set forth herein.

24. The PWPCCL “provides a statutory remedy when the employer breaches a contractual obligation to pay earned wages.” De Asencio v. Tyson Foods, Inc., 342 F.3d 301, 309 (3d Cir. 2003) (internal quotations omitted).

25. Defendants violated the PWPCCL by failing to pay Plaintiff the agreed-upon salary and bonus payments.

**COUNT IV**  
**(Alleging, in the Alternative, Unjust Enrichment)**

26. All previous paragraphs are incorporated as though fully set forth herein.

27. The Pennsylvania doctrine of unjust enrichment permits a plaintiff to recover from a defendant where (i) the plaintiff has conferred benefits on the defendant, (ii) such benefits have been appreciated by the defendant, and (iii) it would be inequitable for the defendant to

retain such benefits without payment of value. Under such circumstances, the plaintiff must be compensated for the benefits unjustly received by the defendant.

28. An unjust enrichment claim may not exist where a defendant's failure to pay wages violated an employment agreement. See Lugo v. Farmers Pride, Inc., 967 A.2d 963, 969-70 (Pa. Super. 2009). However, the claim may be pled as an alternative theory in the event that the Court finds no contractual basis for the unpaid wage claim. See id.

29. Here, even if Plaintiff does not have a contractual right to the salary and bonus payments described herein, it would be inequitable for Defendants to retain the benefits of Plaintiffs' work without making the salary or bonus payments.

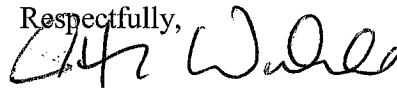
**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff seeks:

- A. Unpaid overtime wages to the fullest extent permitted under the FLSA and PMWA;
- B. Liquidated damages to the fullest extent permitted under the FLSA and the PWPCCL;
- C. Prejudgment interest to the fullest extent permitted under all claims;
- D. Litigation costs, expenses, and attorney's fees to the fullest extent permitted under the FLSA, the PMWA, and the PWPCCL; and
- E. Such other and further relief as this Court deems just and proper.

Date: December 16, 2017

Respectfully,



---

Peter Winebrake  
R. Andrew Santillo  
Mark J. Gottesfeld  
WINEBRAKE & SANTILLO, LLC  
715 Twining Road, Suite 211  
Dresher, PA 19025  
Phone: (215) 884-2491





**HEADQUARTERS**  
1500 Market Street  
12th Floor - East Tower  
Philadelphia, PA 19102  
Phone: 215-249-6290  
Fax: 267-367-7310

30 Wall Street  
8th Floor  
New York, NY 10005  
Phone: 212-634-4690  
Fax: 212-634-4691

1674 Meridian Avenue  
Miami Beach, FL 33139  
Phone: 305-423-1095  
Fax: 305-423-1096

February 7, 2017

Daryl Kofsky  
713 Lake Drive  
Ambler, PA 19002

Dear Daryl:

It is with great pleasure that I am herewith offering you an opportunity with my firm, Black Diamond Forex LP.

Given the circumstances we discussed earlier today I am extending this employment offer to you:

Start Date: Feb 13, 2017


Title: Senior Recruiter, FX Operations

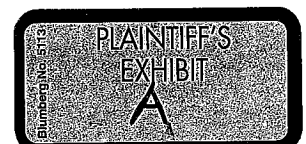
Pay Rate: \$11.00/hr\*\* + \$125.00 per hire - 60 days REVIEW and adjust

Daryl, I have spent considerable time with you and do believe you will be an asset. You absolutely need to become familiar with proprietary trading and Forex. This will be important as you bring in the candidates.

The initial flow of applications has been enormous and it looks like there is significant interest in this opportunity. It is exciting and will be good for you to be a part of it.  
I look forward to speaking with you soon.

Best Regards,

  
Michael Salerno  
Managing Partner/Executive Trader





**HEADQUARTERS**

1500 Market Street  
12th Floor - East Tower  
Philadelphia, PA 19102  
Phone: 215-249-6290  
Fax: 267-367-7310

30 Wall Street  
8th Floor  
New York, NY 10005  
Phone: 212-634-4690  
Fax: 212-634-4691

1674 Meridian Avenue  
Miami Beach, FL 33139  
Phone: 305-423-1095  
Fax: 305-423-1096

May 25, 2017

To Whom It May Concern:

This letter is being written to confirm that Daryl Kofsky is a full-time employee of Black Diamond Forex LP since February 14, 2017 and has the job title of Senior Recruiter.

Beginning June 1, 2017, Black Diamond Forex LP has agreed to compensate Daryl Kofsky with an annual salary of \$55,000. In addition, Daryl will continue to receive a bonus of \$125 per successful recruit, pending the applicants signed contract.

Daryl's responsibilities include but are not limited to creating a recruiting system that attracts top talent to the firm, writing and posting job descriptions on job boards, communicating as the liaison between senior partners and candidates, scheduling interviews, screening applicants, organizing seminars and conducting in-person interviews.

Daryl is an asset to this firm and his employment here is very stable.

Very truly yours,

  
Michael J. Salerno  
Managing Partner

